Supreme Court, U.S.
FILED

01 959 JAN 02 2002

OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

LEANNE CHILDS,

Petitioner.

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

Gregory A. Adamski*
Karen Conti
Dawn Sheikh
Adamski & Conti
100 N. LaSalle Street
Chicago, Illinois 60602
312.332-7800

*Attorney of Record

3407

THE QUESTIONS PRESENTED FOR REVIEW

Whether defendant's constitutional rights were denied when the trial court refused expert testimony on the issue of defendant's involuntary intoxication at the time of the offense.

Whether defendant's constitutional rights were denied when the trial court refused to tender an involuntary manslaughter instruction to the jury, when there was evidence of recklessness in the record.

THE LIST OF ALL PARTIES TO THE PROCEEDING IN THE SUPREME COURT OF ILLINOIS

The parties to the proceedings in the Supreme Court of Illinois were respondent People of the State of Illinois and petitioner Leanne Childs.

TABLE OF CONTENTS

THE QUESTIONS PRESENTED FOR REVIEW.....i

THE LIST OF ALL PARTIES TO THE PROCEEDING.....ii

TABLE OF CONTENTS.....iii

TABLE OF CITED AUTHORITIES.....iv

CITATION OF OFFICIAL AND UNOFFICIAL REPORTS.....1

JURISDICTIONAL STATEMENT.....1

CONSTITUTIONAL PROVISIONS INVOLVED.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....3

CONCLUSION.....11

APPENDIX.....A-1

TABLE OF CITED AUTHORITIES

CASE CITATIONS

In re Oliver, 333 U.S. 257,
68 S.Ct. 499 (1948).....3

Morrissey v. Brewer, 408 U.S. 471,
92 S.Ct. 2593 (1972).....3

Jenkins v. McKeithen, 395 U.S. 411,
89 S.Ct. 1843 (1969).....3

Mattox v. United States, 156 U.S. 237,
15 S.Ct. 337 (1895).....4

Washington v. Texas, 388 U.S. 14,
87 S.Ct. 1920 (1967).....4

People v. Anderson, 113 Ill.2d 1,
495 N.E.2d 485 (Ill.1986).....6, 7

People v. Britz, 123 Ill.2d 446,
528 N.E.2d 703 (Ill.1988).....6

People v. Perry, 19 Ill.App.3d 254,
311 N.E.2d 341 (Ill.App.1974).....9

People v. Lyda, 190 Ill.App.3d 540,
546 N.E.2d 29 (Ill.App.1989).....9

People v. Bryant, 113 Ill.2d 497,
499 N.E.2d 413 (Ill.1986).....9

People v. Joyner, 50 Ill.2d 302,
278 N.E.2d 240 (Ill.1975).....9

People v. DeMumbree, 98 Ill.App.3d 22,
424 N.E.2d 73 (Ill.App.1981).....9

People v. Burnett, 97 Ill.App.3d 1015,
423 N.E.2d 1193 (Ill.App.1981).....9

People v. Schwartz, 64 Ill.App.3d 989,
382 N.E.2d 59 (Ill.App.1978).....9

People v. Robinson, 163 Ill.App.3d 754,
516 N.E.2d 1292 (Ill.App.1987).....9

OTHER AUTHORITIES

28 U.S.C. §1254(2).....1

5th Amend., U.S. Const.....1

6th Amend., U.S. Const.....1, 4

14th Amend., U.S. Const.....2

Illinois Pattern Jury Instructions 707 and 708.....1

Petitioner Leanne Childs respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

CITATION OF OFFICIAL AND UNOFFICIAL REPORTS

The decision of the Supreme Court of Illinois was entered on October 3, 2001, and is not officially reported. The decision of the Appellate Court of Illinois was entered on June 26, 2001, and is not officially reported.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Illinois was entered on October 3, 2001. The Court's jurisdiction is invoked under 28 U.S.C. §1254(2).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution states that:

> No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces or in the militia when in actual service of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

The Sixth Amendment states that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense.

The Fourteenth Amendment states, in part, that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On May 25, 1999, the circuit court of Sangamon County, Illinois sentenced petitioner Leanne Childs to life imprisonment for the first degree murders of Aaron Calcara and Michael Nelson. Substantial constitutional violations occurred during trial and beg for the Court's review and consideration.

Essentially stated, Ms. Childs was personal friends with Mr. Calcara and Mr. Nelson. On May 1, 1998, she shot them to death in her automobile outside Springfield, Illinois.

She claimed that they had threatened her with rape and that they forced her to smoke a PCP-laced cigarette, which caused her to be involuntarily intoxicated. At trial, she sought to introduce her involuntary intoxication defense and offered an involuntary manslaughter instruction, both of which were rejected, causing Ms. Childs' serious deprivations of her constitutional rights.

ARGUMENT

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. In In re Oliver, 333 U.S. 257, 273, 68 S.Ct. 499 (1948), Mr. Justice Black, writing for the Court, identified these rights as among the minimum essentials of a fair trial:

> A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense--a right to his day in court--are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.

See also Morrissey v. Brewer, 408 U.S. 471, 488-489, 92 S.Ct. 2593 (1972); Jenkins v. McKeithen, 395 U.S. 411, 428-29, 89 S.Ct. 1843 (1969).

Ms. Childs was denied an opportunity to present her legitimate intoxication defense and her lesser-included offense argument. She was not allowed to demonstrate her expert's knowledge, to probe into the details of his opinion, or to "sift" through his testimony so that the

jury might judge for itself whether he was worthy of belief. Mattox v. United States, 156 U.S. 237, 242-43, 15 S.Ct. 337 (1895). She was not allowed to submit her lesser-included offense instruction to the jury. Ms. Childs' constitutional rights were violated.

ISSUE I

> Defendant's constitutional rights were denied when the lower court refused expert testimony on the issue of defendant's involuntary intoxication at the time of the offense.

The Sixth Amendment--applied to the States by the Fourteenth Amendment--requires that every person charged with a crime has "complusory process for obtaining witnesses in his favor. This Complusory Process Clause insures that defendants will be allowed to subpoena witnesses and to obtain and submit testimony. Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920 (1967).

Petitioner Leanne Childs timely raised the affirmative defense of involuntary intoxication and filed the report of her expert, Robert E. Chapman, M.D. In opening statements at trial, her attorney informed the jury that, at the time of the offense, Ms. Childs was ordered at gunpoint to smoke a PCP-laced cigarette that affected her ability to act as a sober and rational person. Her attorney told the jury that Ms. Childs had an expert and that, in his expert opinion, the ingestion of this PCP-laced cigarette accounted for or led to her actions at the time of the offense. Defendant's attorney made the following comments to the jury:

> He pointed the gun at Leanne and told Leanne that, 'If you didn't have sex with me and Mr. Calcara,

I'm going to shoot you and your seven-month old child.'

Leanne was in a panic. She was frantic. They said, 'Smoke this, this will calm you down.'

They ordered her then at gunpoint to smoke what we believe to be a PCP-lac d marijuana cigarette, Leanne at gunpoint complied and smokes the PCP-laced marijuana cigarette...

And Dr. Chapman will come down here and he will tell you that based upon what Leanne Childs was facing that day he will tell you, and he will explain to you why she did what she did considering her background and the facts presented to her. He will explain her actions.

He will tell you also that when she was ordered at gunpoint to smoke that PCP-laced cigarette that that affected her ability to act as a sober, rational person, and he will tell you in his considered expert opinion, that based on those facts Leanne Childs was not guilty, she was acting in self-defense.

(Vol. XVI, 59-61)

There were no objections to this argument.

A week after opening statements, the prosecution filed a motion in limine (C-00153), seeking to prohibit Dr. Chapman's testimony on the issue of involuntary intoxication.

The trial court barred this testimony and relied upon People v. Anderson, 113 Ill.2d 1, 495 N.E.2d 485 (Ill. 1986) and People v. Britz, 123 Ill.2d 446, 528 N.E.2d 703 (Ill. 1988).

The trial court and the Illinois appellate courts erred in prohibiting the defendant from eliciting Dr. Robert Chapman's testimony on the issue of involuntary intoxication.

In People v. Britz, the Illinois Supreme Court held that the trial court properly refused to allow defendant's expert witnesses from testifying about defendant's alleged long-standing mental disease or defect predicated upon his voluntary ingestion of alcohol and drugs. The reports of the three experts contained defendant's self-serving hearsay statements regarding the type and quantity of alcohol and drugs that defendant consumed. Following the hearing, the trial court ruled that the defense experts could testify only to conclusions reached through objective tests and any opinions based on the defendant's self-serving statements were inadmissible.

In affirming the trial court's decision, the Court noted that defense experts did not rely on any other reports in assessing defendant's alleged substance abuse disorder and that the basis of their opinions relied substantially on defendant's statement. It held that "to allow an expert to rely solely on self-serving statements made by the Defendant to determine his sanity defense permits this court to circumvent and abrogate the intent and meaning of the Federal Rules of Evidence and the rules announced in Wilson and Anderson." Britz, 123 Ill.2d at 446, 528 N.E.2d at 710.

In People v. Anderson, the Illinois Court held that defendant's expert was entitled to disclose on direct examination the contents of materials used to form an opinion about the defendant's sanity. The trial court refused to allow any disclosure of the reports' contents about defendant's sanity. In reversing, the Anderson Court stated that:

> Rule 703 makes no distinction between treating and non-treating physicians and [...] either may express an opinion founded on any information reasonably relied upon by experts in the field [.] [T]he State's argument has already been rejected. To the extent that a savvy defendant's statements tending to show mental illness might be consciously self-serving, this possibility can adequately be brought out on cross-examination of the expert.

113 Ill.2d at 12, 495 N.E.2d at 490.

The Court determined that, because psychiatrists customarily rely on patients' statements in forming a diagnosis, an expert must be allowed to repeat those statements, if relevant, to explaining the opinion to the jury. Id.

Here the facts and circumstances are comparable to Anderson. Due process and the Complusory Process Clause require that Ms. Childs call Dr. Chapman to testify about her involuntary intoxication at the time of offense.

In rendering his expert opinion that defendant suffered from involuntary intoxication at the time of the offense, Dr. Chapman did not rely solely upon defendant's self-serving statements. Dr. Chapman testified that he reviewed police reports, witness statements, crime scene

reports, and defendant's statements and demeanor. (Vol. XX, 64, 65).

The prosecution compounded the prejudice to Ms. Childs by not objecting to this testimony before trial or during opening statement. The prosecution was well aware that Ms. Childs would call Dr. Chapman and elicited the opinions in his written report. It is highly probable that this jury was tainted by defendant's failure to present such important promised testimony.

Criminal defendants must be allowed to present any valid defense for jury consideration. In serious cases of such an uncharacteristically bizarre crime committed by a woman, this defense would have explained defendant's violent and egregious actions.

There can be no greater error to a criminal defendant than to exclude a valid defense. The trial court committed constitutional error in prohibiting Dr. Chapman about involuntary intoxication.

ISSUE II

Defendant's constitutional rights were denied when the trial court refused to tender an involuntary manslaughter instruction to the jury, when there was evidence of recklessness in the record.

During the jury instruction conference at trial, Ms. Childs requested an instruction on involuntary manslaughter. (Vol. XXI, 4) The trial court refused to tender it. (Vol. XXI, 8, 9). The trial court erred in refusing to tender the involuntary manslaughter instruction because the evidence of recklessness in the record warranted it. The trial court

unconstitutionally took this issue from the jury. This refusal implicates Ms. Childs' rights to due process and confrontation.

It is well settled that, where there is even slight evidence in the record which, if believed by the jury, would reduce the crime to a lesser-included offense, an instruction defining the lesser offense should be given. People v. Perry, 19 Ill.App.3d 254, 311 N.E.2d 341 (Ill.App.1974).

Where such evidence exists, the trial court may not weigh the evidence in deciding whether an issue has been raised entitling the defendant to the instruction. People v. Lyda, 190 Ill.App.3d 540, 546 N.E.2d 29 (Ill.App.1989). As noted in People v. Bryant, 113 Ill.2d 497, 499 N.E.2d 413, (Ill.1986), an instruction on a lesser offense that is included in the one with which the defendant is charged "provides an important third option to a jury which, believing that the defendant is guilty of something but uncertain whether the charged offense has been proved, might otherwise convict rather that acquit the defendant of the greater offense."

Credible evidence that would reduce murder to manslaughter requires a manslaughter instruction. People v. Joyner, 50 Ill.2d 302, 446 N.E.2d 240 (Ill.1975). To justify an involuntary manslaughter instruction, there must be evidence of recklessness. People v. DeMumbree, 98 Ill.App.3d 22, 424 N.E.2d 73 (Ill.App.1981); People v. Burnett, 97 Ill.App.3d 1015, 423 N.E.2d 1193 (Ill.App.1981). A jury is entitled to decide between accident and recklessness. People v. Schwartz, 64 Ill.App.3d 989, 993, 382 N.E.2d 59, 63 (Ill.App.1978).

Clearly, the evidence here supported the submission of an involuntary manslaughter instruction. Prior to the shooting, Mr. Nelson pointed the gun at defendant and told

her to remove her shirt. (Vol. XIX, 122-124). She complied and broke down crying. (Vol. XIX, 125). Mr. Nelson momentarily put the gun down on the console of the car. Believing that Mr. Calcara and Mr. Nelson would kill her, defendant grabbed the gun. A struggle ensued over the gun. The deaths followed.

The sequence of events is more than sufficient to justify tendering an involuntary manslaughter instruction to the jury. A jury could very well have concluded that defendant unintentionally caused the death of Mr. Nelson and/or Mr. Calcara by acts that she performed recklessly and that were likely to cause death or great bodily harm to Nelson and Calcara. See Illinois Pattern Jury Instructions 707 and 708.

The facts are similar to those in People v. Robinson, 163 Ill.App.3d 754, 516 N.E.2d 1292 (Ill.App.1987). In Robinson, evidence was presented that the victim brandished a weapon and that the defendant grabbed the victim's hand, and the gun discharged. Mr. Robinson testified that it was not he but another who produced the gun and he fought back in self-defense. Robinson, 163 Ill.App.3d at 776, 516 N.E.2d at 1309. The Robinson court ruled:

> If the jury chose to believe him as to the foregoing but did not believe that he thought he was acting in self-defense, it might nevertheless have believed that his actions were reckless, which would support an involuntary manslaughter conviction.

Robinson, 163 Ill.App.3d at 778, 516 N.E.2d 1292 at 1310. The Robinson court held that failure to give the involuntary manslaughter instruction was reversible error. Robinson, 163 Ill.App.3d at 780, 516 N.E.2d at 1311.

CONCLUSION

For the foregoing reasons, petitioner Leanne Childs respectfully requests that the Court grant the petition for a writ of certiorari, issue the writ, hear this case on its merits, reverse her conviction and life sentence, and remand this case to the Illinois courts for further proceedings.

_____
Petitioner Childs' Attorney

Gregory A. Adamski
Karen Conti
Dawn Sheikh
Adamski & Conti
100 N. LaSalle Street
Chicago, Illinois 60602
312.332-7800

TABLE OF CONTENTS OF APPENDIX

Table of Contents to Appendix.....A-2

Illinois Appellate Opinion.....A-3

Illinois Supreme Court Opinion.....A-17

No. 4-99-0496

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)
vs.	)
LEANNE CHILDS, Defendant-Appellant.	)

Appeal from the Circuit Court of Sangamon County
No. 98CF428
The Honorable Leo J. Zappa, Jr.,
Judge Presiding.

ORDER

On March 24, 1999, a jury convicted defendant, Leanne Childs, of first degree murder of Aaron Calcara (Calcara) (720 ILCS 5/9-1 (a) (1) (West 1998)) and first degree murder of Michael Nelson (Nelson) (720 ILCS 5/9-1 (a) (1) (West 1998)). On May 25, 1999, the trial court sentenced defendant to natural life in prison (730 ILCS 5/5-8-1 (a) (1)(c) (ii) (West 1998)). Defendant appeals, arguing that (1) the trial court erred when it granted the State's motion in limine barring defendant from presenting evidence of defendant's involuntary intoxication under section 6-3(b) of the Criminal Code of 1961 (720 ILCS 5/6-3 (b) (West 1998)); (2) the trial court erred in denying defendant's motion in Limine thereby allowing the state to introduce evidence of alleged statements that defendant made to Melanie Thurmond; (3) the trial court erred by refusing to instruct the jury on the offense of involuntary manslaughter;

(4) the trial court abused its discretion in admitting testimony as to defendant's alleged drug transactions; and (5) the trial court erred in restricting defense counsel from cross-examining witness Brenda House concerning a statement made by defendant, when such statement was admissible under the doctrine of completeness and would help explain defendant's actions. We affirm.

The record reflects that on the afternoon of May 1, 1998, individuals driving on a rural roadway in Sangamon County, Illinois, observed defendant pulling the bodies of Calcara and Nelson from a vehicle owned by defendant's father. Calcara and Nelson suffered multiple gunshot wounds to the head.

McKindle Warfield (Warfield,) testified that he had known defendant for "about two years." On April 29, 1998, defendant told Warfield that she believed Calcara had stolen $850 from the pocket of defendant's coat. Warfield believed that the money was "drug money." He had witnessed defendant sell marijuana on numerous occasions and "five to ten times" during the week before the murders. Warfield agreed to confront Calcara, alleging the money was Warfield's, in an effort to get the money back. Defendant drove Warfield to the home of Rhett Hasara (Hasara). Hasara gave Warfield a handgun and bullets. Defendant drove Warfield to her parents, home, where they found Calcara. Warfield confronted Calcara about the missing money, showing Calcara the gun, "like I was meaning business." Calcara did not have the money. Warfield left the home.

On May 1, 1998, defendant approached Warfield at Lanphier High School. Defendant asked Warfield for the handgun. She told Warfield that Calcara admitted taking her

money, that he "was bragging on it." Calcara had given the money to Nelson. Defendant told Warfield that she needed the gun to get her money back. Warfield gave defendant the handgun and bullets.

Brenda House (House), a detective with the Sangamon County Sheriff's department, testified on cross-examination by defense counsel regarding a statement made to House by defendant. Defendant told House that, on May 1, 1998, defendant offered to take Calcara and Nelson "somewhere they wanted to go." The three individuals, and defendant's infant son, first drove to a public aid office in Springfield, Illinois. Defendant told House that she gave Calcara the handgun. Calcara drove the vehicle and Nelson sat in the front passenger seat. Defendant sat in the backseat behind Calcara and next to her infant son. While driving in a rural area, Nelson pointed the gun at defendant and told her that he was going to kill her. Nelson believed that defendant told police officials that he was responsible for a series of car burglaries. Nelson told defendant to remove her shirt. Defendant told House that she believed that she was going to be sexually assaulted by Calcara and Nelson. Nelson placed the gun on the console of the vehicle. Defendant told House that she grabbed the gun and that she and Nelson struggled briefly. Defendant then shot Nelson three times in the head and Calcara two times in the head. Defendant pulled the victims, bodies from the vehicle and drove to Decatur, Illinois. Police officials later arrested defendant.

A jury convicted defendant of first degree murder of Calcara and first degree murder of Nelson. The trial court sentenced defendant to natural life in prison. This appeal followed. We will discuss additional relevant facts in the context of the issues raised on appeal.

Defendant first argues that the trial court erred when it granted the State's motion in limine barring defendant from presenting evidence of defendant's involuntary intoxication under section 6-3(b) of the Criminal Code of 1961 (720 ILCS 5/6-3(b) (West 1998)). Specifically, the trial court barred Robert Chapman (Chapman), a medical doctor of psychiatry, from expressing the opinion that defendant suffered an altered mental state as a result of involuntarily induced phencyclidine (PCP) intoxication at the time of the murders. "The admissibility of evidence at trial is a matter within the sound discretion of the trial court, and that court's decision may not be overturned on appeal absent a clear abuse of discretion." People v. Illgen, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519 (1991).

The record reflects that on March 24, 1999, the State filed a motion in limine to bar Chapman from expressing the above opinion. In an offer of proof on March 22, 1999 (we note the inconsistency of the dates of record), Chapman testified that defendant told him she had smoked marijuana with Calcara and Nelson on the afternoon of the murders. Defendant told Chapman that on the last of those occasions "she felt that she must, they had a gun and were threatening her and she felt intimidated, so she began to smoke it." After defendant smoked the marijuana, Calcara and Nelson told her that "there was PCP in there." Chapman testified that "[tlhe only information I have that [defendant] smoked PCP is from her, which is what she told me." At the conclusion of the offer of proof, the trial court stated in part:

> "The two key cases for the record are People v. Clifford Anderson, 495 N.E.2d 485, and People v. Britz, 528 N.E.2d 703.

> The [c]ourt after hearing the offer of proof made by Dr. Chapman in this case finds the facts in this case more in line with People v. Britz.
>
> Clearly in this case Dr. Chapman has relied substantially, if not totally on the [d]efendant's statements, self-serving, regarding the alleged substance.
>
> ***
>
> [T]he involuntary intoxication motion in limine is allowed."

In People v. Britz, 123 Ill. 2d 446, 528 N.E.2d 703 (1988), the defense's experts did not rely on any other reports in assessing defendant's alleged substance disorder. They did not refer, either before or after their examination of defendant, to reports made by the officers, the statements of witnesses, or the reports from the rehabilitative center or centers in which defendant allegedly received treatment. They did not speak to friends or members of his family. The bases of their opinions relied substantially on the statements of defendant. The supreme court did not believe that Wilson v. Clark, 84 Ill. 2d 186, 417 N.E.2d 1322 (1981), cert. denied, 454 U.S. 836, 70 L. Ed. 2d 117, 102 S. Ct. 140 (1981), in combination with People v. Anderson, 113 Ill. 2d 1, 495 N.E.2d 485 (1986), cert. denied, 479 U.S. L012, 93 L. Ed. 2d 713, 107 S. Ct. 658-(1986), allowed for such an extension of the rule.

> "To allow an expert to rely solely on self-serving statements made by the defendant to determine his sanity defense permits this court to circumvent and abrogate the intent and meaning of the Federal Rules of Evidence and the rules announced in Wilson and

> Anderson. If this court were to allow such testimony, it would open the door for a defendant to tell his side of the story without the possibility of being cross-examined." Britz, 123 Ill. 2d at 462, 528 N.E.2d at 711.

In another case, Melecosky v. McCarthy Brothers Co., 115 Ill. 2d 209, 503 N.E.2d 355 (1986), the supreme court followed the holdings in Wilson and Anderson. The supreme court allowed the testimony of the plaintiff's expert witness, a nontreating physician. Melecosky, 115 Ill. 2d 214-15, 503 N.E.2d at 358. Unlike this case, the expert based part of his opinion not only on the plaintiff's subjective statements but also on the medical history as recorded by the plaintiff's previous physicians and his own tests. In this case, the expert relied substantially, if not totally, on defendant's self-serving statements regarding her alleged involuntary intoxication. Thus, this court finds that the trial court did not err. Moreover, even if we were to find error, the evidence of defendant's guilt was overwhelming and the alleged error would be harmless.

Defendant next argues that the trial court erred in denying defendant's motion in limine, thereby allowing the State to introduce evidence of alleged statements that defendant made to Melanie Thurmond (Thurmond). The record shows that the State identified Thurmond as an additional witness on March 11, 1999. (The trial in this matter began on March 15, 1999.) The State provided defense counsel with her name and last known address, together with her statement. Thurmond was present in the Sangamon County jail with defendant and alleged that she had conversations with defendant about the murder of Calcara and Nelson. The State provided defense counsel with all known prior convictions of Thurmond and made

Thurmond available for interview by defense counsel on March 14, 1999. On March 15, 1999, defendant filed a motion in limine regarding surprise witnesses. Defendant alleged an inadequate period of time to "investigate and prepare for cross-examination" of Thurmond. The trial court heard argument on the motion in limine on March 16, 1999. The trial court denied defendant's motion in limine regarding surprise witnesses; however, the trial court ordered the State to provide defense counsel with all known prior convictions of the witness, to make the witness available for interview by defense counsel, and to present the witness' testimony near the end of the State's case in chief. Moreover, defense counsel was to have "wide latitude in cross-examination" of the witness. Thurmond testified on March 18, 1999.

Supreme Court Rule 412 (134 Ill. 2d R. 412(a)(ii)(d)) requires that the State disclose to defense counsel any written or recorded statements and the substance of any oral statements made by the accused and a list of witnesses to the making and acknowledgment of such statements. This rule encompasses not only confessions but any statements made to anyone that might have a bearing on the defendant's guilt or innocence. People v. Steidl, 142 Ill. 2d 204, 228, 568 N.E.2d 837, 846 (1991). Compliance with the discovery provisions is mandatory and is accomplished only if the State notified the defense of the alleged incriminating statement or evidence promptly and in so doing exercised due diligence to ensure that the defendant received the information. Steidl 142 Ill. 2d at 228, 568 N.E.2d at 846.

In the present case, the prosecution interviewed Thurmond on March 11, 1999. Thurmond had been identified by another witness as an individual incarcerated

in the Sangamon County jail while defendant was also present in the jail. This witness had not identified Thurmond in earlier conversations with police authorities. The State conducted an immediate search for Thurmond, and provided defense counsel with her statement as soon as it had been prepared. We find no discovery violation committed by the State. This case is one in which the prosecutor was unaware of the existence of a witness and where there was no lack of due diligence by the prosecution.

Defendant relies on the decisions in People v. Heinzmann, 232 Ill. App. 3d 557, 597 N.E.2d.942 (1992), and Peoplle v. Millan, 47 Ill. App. 3d 296, 361 N.E.2d 823 (1977). However, those cases are predicated on their facts, which establish the State's conduct in not disclosing the relevant names bordered on bad faith. They are inapplicable to the present case, since there has been no discovery violation on the part of the State.

Here, we find no evidence of bad faith on the State's part. The trial court did not err when it allowed Thurmond to testify.

Defendant next argues that the trial court erred by refusing to instruct the jury on the offense of involuntary manslaughter. The instruction of the jury is a matter resting within the sound discretion of the trial court. Castillo, 188 Ill. 2d 536, 540, 723 N.E.2d 274, 277 (2000); People v. Hope, 168 Ill. 2d 1, 46, 658 N.E.2d 391, 411 (1995). An instruction is justified on a lesser offense where there is some evidence to support the giving of the instruction. Castillo, 188 Ill. 2d at 540, 723 N.E.2d at 277; People v. DiVincenzo, 183 Ill. 2d 239, 249, 700 N.E.2d 981, 987 (1998).

Where some evidence supports the instruction, the trial court's failure to give the instruction constitutes an abuse of discretion. Castillo, 188 Ill. 2d at 540, 723 N.E.2d at 277; DiVincenzo, 183 Ill. 2d at 249, 700 N.E.2d at 987.

A defendant commits involuntary manslaughter when, without lawful justification, he unintentionally kills an individual by recklessly performing acts that are likely to cause death or great bodily harm. Castillo, 188 Ill. 2d at 540, 723 N.E.2d at 277; DiVincenzo, 183 Ill. 2d at 250, 700 N.E.2d at 987; 720 ILCS 5/9-3(a) (West 1998). For purposes of involuntary manslaughter, a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that his acts are likely to cause death or great bodily harm to another. Castillo, 188 Ill. 2d at 540-41, 723 N.E.2d at 277; DiVincenzo, 183 Ill. 2d at 250, 700 N.E.2d at 987; 720 ILCS 5/4-6 (West 1998).

An involuntary manslaughter instruction is not warranted where the nature of the killing, shown by either multiple wounds or the victim's defenselessness, reveals the inapplicability of the theory. DiVincenzo, 183 Ill. 2d at 251, 700 N.E.2d at 988; People v. Trotter, 178 Ill. App. 3d 292, 298, 533 N.E.2d 89, 92 (1988). The instruction is unnecessary when the nature of defendant's conduct is of such character so as to defeat any assertion of reckless or inadvertent conduct. Trotter, 178 Ill. App. 3d at 298, 533 N.E.2d at 92. In the present case, the victims suffered multiple gunshot wounds to the head. These multiple wounds show that the nature of the killing could not have been the result of recklessness.

Defendant relies on People v. Robinson, 163 Ill. App. 3d 754, 516 N.E.2d 1292 (1987). In Robinson, the defendant

asserted that, while trying to make peace with the decedent, with whom he had quarreled earlier, he saw the decedent's companion pull out a shotgun. The defendant grabbed for the gun and in the ensuing struggle the gun fell to the ground and discharged, killing the decedent. The appellate court held that an involuntary manslaughter instruction should have been given based on this evidence because a jury could have disbelieved defendant's claim of self-defense and still found his actions to be reckless. Robinson, 163 Ill. App. 3d at 778, 516 N.E.2d at 1310.

In the present case, we find no reasonable possibility that the acts of defendant could have been unintentional. Defendant shot Nelson in the head three times and Calcara in the head two times. Although defendant alleged that she struggled with Nelson, we cannot characterize the resulting fatal gunshot wounds to each victim as unintended. The evidence supports the conclusion that defendant intended to kill or do great bodily harm to the victims. Defendant has not pointed to any evidence indicating that her acts were merely inadvertent or reckless. Intentionally and deliberately aiming and firing a gun is not mere recklessness. Robinson, 163 Ill. App.3d at 779, 516 N.E.2d at 1310. The refusal of the involuntary manslaughter instruction was not in error.

Defendant next argues that the trial court abused its discretion in admitting testimony as to defendant's alleged drug transactions. According to defendant, this evidence was not relevant for any proper purpose and any possible probative value of this evidence was outweighed by its prejudicial effect.

The State argues that defendant has waived the alleged error because defendant did not raise this issue with adequate specificity in her motion for new trial.

"A written posttrial motion must set forth with sufficient specificity the errors relied upon for reversal or else such alleged errors are waived on review." People v. Young, 248 Ill. App. 3d 491, 503, 618 N.E.2d 1026, 1035 (1993). In her motion for new trial, defendant states, in part:

> "13. The [c]ourt erred by allowing the testimony of various witnesses as to prior bad acts involving the defendant's activity over the defendant's objection and by denying the defendant's motion in limine with respect thereto."

We find the omission of the names of the "various witnesses," and the subject matter of the alleged "prior bad acts" of the defendant and of defendant's "activity" so general as to defeat the purposes envisioned by section 116-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-1 (West 1998)). See People v. Heard, 187 Ill. 2d 36, 58, 718 N.E.2d 58, 71 (1999). The trial court did not abuse its discretion in admitting evidence of defendant's drug transactions as evidence of defendant's motive and intent to harm Calcara and Nelson. Warfield's testimony suggests that the reason for the killings was that defendant believed that Calcara stole $850 from the pocket of her coat, monies acquired through defendant's drug transactions. Evidence that the defendant was involved in drug dealings is clearly relevant to the establishment of a motive for defendant's killing of Calcara and Nelson.

In Steidl, a jury convicted the defendant of the murder of two individuals. Defendant's ex-wife testified to defendant's alleged drug transactions and defendant's ex-girlfriend testified that defendant told her that he had in the

past dealt cocaine to "all the bigwigs in Paris" and wanted to do so again. The testimony suggested that the reason for the killings was that one of the individuals murdered wanted to get out of a drug deal. The supreme court found that "[e]vidence that the defendant was involved in drug dealings with [a codefendant] is clearly relevant to the establishment of a motive for defendant's involvement in the killings." Steidl, 142 Ill. 2d at 230, 568 N.E.2d at 847.

Aside from Warfield's testimony about defendant's alleged drug transactions, defendant also maintains that the testimony of Phillip Bornstein (Bornstein) was prejudicial. Bornstein, a medical doctor of psychiatry, testified he examined defendant on December 17, 1998. It was Bornstein's opinion that defendant has a conduct disorder. Bornstein identified the various behaviors exhibited by defendant that contributed to his diagnosis, including a history of lying and stealing, violations of rules, truancy, selling drugs, and the shooting of these two individuals.

Because a psychiatrist customarily relies on statements made by an individual in forming a diagnosis, an expert must be allowed to repeat those statements if relevant to explaining the opinion to the jury. People v. Anderson, 113 Ill. 2d 1, 5, 495 N.E.2d 485, 490 (1986). We find the testimony regarding defendant's selling of drugs relevant to the basis of Bornstein's diagnosis and, further, the prejudicial effect of the evidence did not outweigh its probative value. Bornstein referenced defendant's drug selling solely in the context of multiple behaviors, offered by Bornstein in support of his diagnosis of a conduct disorder.

This evidence was introduced to show defendant's motive and the jury was properly instructed on the limited purpose for which the evidence was received. Illinois

Pattern Jury Instructions, Criminal, No. 3.14 (2d ed. 1981) (hereafter IPI Criminal 2d). The admission of evidence relating to defendant's alleged drug transactions was not error.

Last, defendant argues that the trial court erred in restricting defense counsel from cross-examining witness Brenda House, a detective with the Sangamon County Sheriff's department, concerning a statement made by defendant when such statement was admissible under the doctrine of completeness and would help explain defendant's actions. We note that the State argues, initially, that defendant has waived the alleged error because she did not argue the doctrine of completeness below. We decline to find waiver and address the merits of defendant's argument.

During cross-examination of House by defense counsel, the following colloquy occurred:

> "Q. Okay. And she told you that she wanted to give the gun to Mr. Calcara because he wanted a gun and he wanted to protect himself from Mr. Warfield?
>
> MR. SCHMIDT [(Assistant State's Attorney)]: Objection. That knowledge would come from Ms. Childs in the form of hearsay, a statement from Mr. Calcara.
>
> THE COURT: Sustained.
>
> MR. OTWELL [(Defense attorney)]: Judge, that goes to explain her actions.
>
> THE COURT: I've ruled on the objection. Proceed.".

Defense counsel then elicited from House that defendant told House that she gave Calcara the gun. Defendant argues that the trial court erred in not allowing House to testify that defendant told House that she gave Calcara the gun "because he wanted a gun and he wanted to protect himself from Mr. Warfield."

With regard to rulings limiting cross-examination, the scope of cross-examination rests largely in the discretion of the trial court, and a reviewing court will overturn its ruling only where there was an abuse of discretion that resulted in manifest prejudice to the defendant. People v. Patterson, 154 Ill. 2d 414, 463, 610 N.E.2d 16, 38 (1992). Our review of the testimony leads us to conclude that the trial judge acted within its discretion in limiting cross-examination of this witness. It was not error for the trial court to sustain the State's objection that "that knowledge would come from [defendant] in the form of hearsay, a statement from [Calcaral," While further clarification might have been permitted, precluding such testimony was not an abuse of discretion.

For the reasons stated above, we affirm the trial court's judgment.

Affirmed.

McCULLOUGH, J., with MYERSCOUGH and KNECHT, JJ. concurring.

2001 Ill. LEXIS 1329

People State of Illinois, respondent, v. Leanne Childs, petitioner.

No. 91997

SUPREME COURT OF ILLINOIS

2001 Ill. LEXIS 1329

October 3, 2001, Decided

PRIOR HISTORY: Leave to appeal, Appellate Court, Fourth District. (4-99-0496).

OPINION:

Petition for leave to appeal denied.